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HIGH COURT OF CHHATTISGARH, BILASPUR

Division Bench:- Hon'ble Shri Vijay Kumar Shrivastava, J
& Hon'ble Shri Dhirendra Mishra, J

Writ Petition No. 276 of 2005

Petitioner: - **Chhedilel Ratre**

Vs.

Respondent :

1. **Election Commission of Chhattisgarh through its Secretary, Raipur (C.G.)**
2. **District Election Officer-cum-Collector, Bilaspur (C.G.)**
3. **Returning Officer, Panchayat, Takhatpur, District Bilaspur (C.G.)**
4. **Ramesh Tandon, S/o Ramadhin Tandon, aged 32 years, R/o Village-Uslapur, District-Bilaspur (C.G.)**

Petitioner by Shri Rajeev Shrivastava with Shri Neeraj Shrivastava, Advocate.
Respondents 1 to 3 by Shri Prashant Mishra, Addl.A.G.
Respondent No.4 by Shri Pradeep Mishra, Advocate.

J U D G E M E N T
(Delivered on 1/04/2005)

The instant writ petition has been preferred by the petitioner against the order of Annexure P/7 dated 25.01.2005 passed by respondent No.2, District Election Officer by which respondent No.2 declared the recounting of the votes dated 24.01.2005 held as per directions of the Returning Officer, Takhatpur, void and in pursuance of the said recounting the election certificate issued to the petitioner has been cancelled. The petition is also directed against the order of Annexure P/8 by which the Returning Officer has issued election certificate declaring respondent No.4 as Sarpanch of Gram Panchayat, Uslapur.

2. Brief facts necessary for adjudication of this petition is that a notification was issued for election to the post of Sarpanch, Gram Panchayat, Uslapur on

15.12.2004 and elections were held and votes were caste on 20.01.2005. The petitioner as also respondent No.4 and two other candidates participated in the election. After election, counting of votes was held on 20.01.2005 and votes were counted. However, the result was not declared and the petitioner made application of Annexure P/1, P/2 and P/3 to the Returning Officer, Presiding Officer and to the District Election Officer. The Returning Officer ordered recount on 23.01.2005 and communicated the same to all the candidates vide Annexure P/4, intimating that recounting of all the rejected votes shall be held on 24.01.2005 at 2.00 pm in the Office of Janpad Sabha. After recount on 24.01.2005, election certificate of Annexure P/5 was issued to the petitioner declaring him elected as Sarpanch of Gram Panchayat, Uslapur. However, on the complaint of respondent No.4, respondent No.2 requisitioned the records of recounting of all the three polling booths of Gram Panchayat, Uslapur and after conduction of enquiry and perusal of the records, by the impugned order declared the recounting void and further directed to amend Form-17 and 21 and accordingly on the basis of the amended Forms, the elected candidate should be given certificate of election. By this order, the election certificate issued to the petitioner has also been cancelled.

3. After filing of the petition, notices were issued by the learned Single Judge to the respondents and after filing of the returns by the respondents, the matter was heard on 10.02.2005. The learned Single Judge, looking to the importance of the questions of public interest arising for decision, formulated issues and referred the same to be decided by the Division Bench as under;

1. Whether after issuance of the certificate as per Rule 83 of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 (for short 'the Rules'), in favour of the petitioner, the District Election Officer was entitled to set aside the election of the petitioner under Rule 84 of the Rules? and

2. Whether the order impugned passed by the District Election Officer, is assailable under the writ jurisdiction?

4. The petitioner has filed the petition on the ground that the order of Annexure P/7 passed by the District Election Officer is without jurisdiction as after the election proceedings are complete, results were declared and election certificates were

issued under Rule 83, the District Election Officer respondent No.2 had no jurisdiction to cancel the notification issued under Rule 83 and the election of the petitioner can only be assailed as per Section 122 of the Act of 1993 by way of filing election petition. The order of District Election Officer is also challenged on the ground that before passing the order of Annexure P/7, no opportunity of hearing was provided to the petitioner and even without hearing the petitioner, his election has been set aside and further in pursuance of the said order, certificate of election has been illegally issued to respondent No.4 vide document of Annexure P/8.

5. The case of respondents No. 1 to 3 in their return is that the order of Annexure P/7 has been passed by the District Election Officer in the exercise of powers available under Rule 84 of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 (hereinafter referred to as 'Rules 1995'). It is submitted by the respondents No. 1 to 3 that after the order of Annexure P/7, the certificate of election has already been granted to the respondent No. 4 and the same can be challenged only by election petition in view of the bar under Article 243 (O) of the Constitution of India.

6. Respondent No. 4 in his return has submitted that the impugned order of Annexure P/7 has been passed by respondent No.2, the District Election Officer while exercising powers under Rule 22 and 27 of Rules 1995 and as per procedure prescribed under Rule 84(4), he has passed the impugned order and the impugned order can not be challenged by the petitioner in view of the Article 243 (o) of the Constitution and in view of the Section 122 of the Act of 1993.

7. The findings of Annexure P/7 recorded are as under;

(a) That, the order of Annexure P/7 has been passed by respondent No.2, District Election Officer by recording a finding that the voting and counting of the votes in all the three polling booths of Gram Panchayat, Uslapur was concluded on 20.01.2005 itself

(b) that the petitioner never submitted any application for recounting in the polling station as from the perusal of the diaries of the Presiding Officer of Polling Booth No. 192, against demand of recounting is written- Nil and though one application for recounting has been submitted before the Presiding Officer of the Booth No. 190 as per the diary of the said Presiding Officer but there is no mention whether it was decided or not and on the basis of it the District Election Officer

has recorded a finding that the petitioner has not submitted any application for recounting and

(c) That, the order of recounting by the Returning Officer of Takhatpur was not in accordance with law. Even on the ground that if at all recounting was to be held, then all the votes ought to have been recounted and not only the rejected votes as was ordered.

(d) That, the order of recounting was also void on the ground that after completion of the counting, there is no provision of recounting and accordingly, it was directed that as per Rule 81-1(B) of the Election Rules 1995, on the basis of result sheets prepared in Form-17, a statement in Form-21 prepared and the candidates who have secured maximum valid votes be declared elected.

8. Before we proceed to consider the contention of the rival parties, it would be appropriate to reproduce Rule 77 of the C.G. Panchayat Raj Adhiniyam, 1993.

*"77.**Counting of votes**.-(1) Every ballot paper which is not rejected under rule 76 shall be counted:*

Provided that no cover containing tender ballot papers shall be opened and no such ballot paper shall be counted.

(2) After the counting of votes in respect of a polling station has been completed, the Returning Officer or such other officer authorized by him, shall make the entries in result sheet in Form 16 for Panchas and in Part one of the result sheet in Form 17, 18 and 19 for sarpanch, members of Janpad Panchayat and Zila panchayat respectively and announce the total number of votes polled by each candidate.

(3) All valid ballot papers shall be bundled together and kept along with the bundle of rejected ballot papers in a separate packet which shall be sealed and on which shall be recorded the following particulars, namely:-

(a) the number of the ward and name of Gram Panchayat in case of election of Panch, the name of Gram Panchayat in case of election of Sarpanch, the number of constituency of Janpad Panchayat or Zila Panchayat as the case may be, in case of election of member of Janpad Panchayat or Zila Panchayat;

(b) the number and name of the polling station where the ballot papers have been used; and

(c) the date of counting."

9. The only question involved in this petition is whether respondent No.2, the District Election Officer has the jurisdiction to cancel the said certificate of election granted to the petitioner as per provision of rule 83 of the Rules 1995 and whether the illegality, if any, committed by the Returning Officer in directing to conduct recount of votes, can be rectified by the District Election Officer in the purported exercise of powers conferred under Rule 22, Rule 27 or Rule 84 of the Rules 1995 and thirdly, whether the order passed by the District Election Officer canceling the certificate of election granted to the petitioner is justified and subsequently whether writ petition lies against the order of Annexure P/7 or P/8 when the election certificate has been issued by respondent no.3, to respondent No. 4 in compliance of the order of Annexure P/7.

10. After voting is over, counting is to be held as per Rule 77 and every ballot paper which is not rejected under Rule 76 is to be counted and thereafter, entries are to be made in the result sheet contained in Form-16 for Panchas, Form-17, 18 and 19 for Janpad Panchayat and Zila Panchayat respectively and announce the total number of votes polled by each candidate. The valid ballot papers and rejected ballot papers are required to be bundled and sealed in a separate packet.

11. Rule 80 provides for recount which is reproduced as hereunder;

> *"**80. Recount of votes;**-(1) After an announcement has been made by the Returning Officer or such other officer authorized by him, of the total number of votes polled by each candidate under sub-rule (2) of rule 77, a candidate or, in his absence, his election agent or his counting agent may apply in writing to the Returning Officer or such officer authorized by him, for a recount of all or any of the votes already counted, stating the grounds on which he demands such recount.*
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> *(2) On such an application being made the Returning Officer or such other officer authorized by him shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable.*
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> *(3) Every decision of the Returning Officer or such other officer authorized by him, under sub-rule (2) shall be in writing and contain the reasons therefore.*
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> *(4) If the Returning Officer or such other officer authorized by him, decides under sub-rule (2) to allow an application either in whole or in part, he shall-*
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> *(a) count the ballot papers again in accordance with his decision:*
> *(b) amend the result sheet to the extent necessary after such recount; and*

(c) announce the amendment so made by him.

(5) After the total number of votes polled by each candidate has been announced under sub-rule (2) of rule 77 or sub-rule (4) the Returning Officer or such other officer authorized by him shall complete and sign the result sheet and no application for a recount shall be entertained thereafter:

Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and election agent present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (1).

(6) The counted ballot papers shall be bundled and kept in the manner mentioned in sub-rule (3) of rule 77.

(7) Result sheets in Form 16, 17 and 19 for Panch, Sarpanch, Member of Janpad Panchayat and Member of Zila Panchayat respectively, prepared by such other officers as are authorized by the Returning Officer, shall be submitted by them, in separate envelops to the Returning Officer for completion and tabulation of votes polled by each candidate.

(8) The Returning Officer on receipt of result sheets under sub-rule (7) shall enter of cause to be entered the total number of votes polled by each candidate contesting for a seat of Sarpanch, Member of Janpad Panchayat or Member of Zila Panchayat at each polling station of the concerned constituency in subsequent part or parts of Form 17, 18 and 19 respectively and complete and sign the result sheet."

12. Rule 81 provides for preparation of return of election and declaration of result which is reproduced as under;

"81. Preparation of return of election and declaration of result.-
(1) The Returning Officer shall prepare a return of election to the office of-

- *(a) Panch in Form 20 on the basis of result sheet compiled in Form 16;*
- *(b) Sarpanch in Form 21 on the basis of result sheet compiled in Form 17;*
- *(c) Member of Janpad Panchayat in Form 22 on the basis of the result sheet compiled in Form 18;*
- *(d) Member of Zila Panchayat in Form 23, on the basis of the result sheet compiled in Form 19.*

and declare the candidate who has received the largest number of valid votes elected.

(2) The return of election and declaration made under sub-rule (1) shall be subject to the order passed by the District Election Officer under rule 84, if any.

(3) The Returning Officer shall send two signed copies of every return under sub-rule (1) to the District Election Officer who shall retain one copy in his office and send the other copy to the Commission forthwith."

13. Rule 83 for grant of certificate to the returned candidate is reads as under;

"83. Grant of certificate of election to the returned candidate;

As soon as may be after a candidate has been declared elected under rule 81, the Returning Officer shall grant to such candidate a certificate of election in Form 25 and obtain from the candidate an acknowledgement of its receipt duly signed by him."

Rule 84 empowers the District Election Officer to correct the clerical or arithmetical mistakes or errors which is reproduced as under;

"84. Powers of District Election Officer to correct clerical or arithmetical mistakes or errors.- *(1) The District Election Officer may at any time but not later then 15 days from the day of declaration of result under rule 81, either suo motu or on a report of the Returning Officer, correct, by an order any clerical or arithmetical mistake or error in the result sheet in Form 16, 17 , 18 or 19 or in the return of election in Form 20, 21, 22 or 23 as the case may be:*

Provided that no correction or amendment shall be made except after giving a notice to all contesting candidates from the ward or constituency in question, about the date, time and place for taking up the matter for such correction.

(2) An order passed by the District Election Officer under sub-rule (1) shall be in writing and contain reasons therefore and a corrected copy of the return of election in Form 20, 21, 22 or 23 as the case may be, duly signed and certified by the District Election Officer shall be sent to the Returning Officer for grant of certificate of election to the candidate declared elected as a result of such correction

(3) Nothing in sub-rule (1) shall confer any power or authority upon the District Election Officer to open any envelope containing counted ballot papers or to direct re-counting of votes.

(4) The certificate of election in Form 25 under rule 83, if already granted by the Returning Officer to a candidate before an order is passed by the District Election Officer under sub-rule (1), shall be deemed to have been recalled and cancelled.

14. As already described in the foregoing paragraphs that after voting was over, the Returning Officer ordered recount on the basis of some complaint by the petitioner and the notice of the decision of recount was issued to all the candidates including the petitioner and respondent No.4 and accordingly, recount was held on 24.01.2005. After the recount, the petitioner was given certificate of election of Annexure P/5.

15. Learned counsel for the petitioner submits that the District Election Officer has no jurisdiction to entertain the complaint of the respondent No.4 and declare the recount held on 24.01.2005 as void and the same was done illegally on exterior considerations which is evident from document of Annexure P/6. He further submits that the result is declared in accordance with rule 81 and certificate of election is granted as per provision of rule 83 when the election proceedings were over and if any party, aggrieved by the said proceeding, may challenge the same by way of filing election petition under Section 122 of the Act 1995 alone. He also submits that no election to any Panchayat can be called into question except by an election petition as per Article 243 (o) of the Constitution of India.

16. Article 243 (o) and Section 122 of Act 1995, are reproduced hereunder;

> ***243-O. Bar to interference by courts in electoral matters.-*** *Notwithstanding anything this Constitution ,-*
>
> *(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243-K, shall not be called in question in any court;*
>
> *(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."*
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> ***122. Election petition.-****(1) An election [1][x x x] under this Act shall be called in question only by a petition presented in the prescribed manner:-*
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> *(i) in case of Gram Panchayat to the Sub-Divisional Officer (Revenue);*
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> *(ii) in case of Janpad Panchayat to the Collector; and*
>
> *(iii) in case of Zila Panchayat to the Divisional Commissioner and not otherwise.*
>
> *(2) No such petition shall be admitted unless it is presented within thirty days from the date on which the election [1][x x x] in question was notified.*
>
> (3) *Such petition shall be enquired into or disposed of according to such procedures as may be prescribed.*

17. Learned counsel for the petitioner further submits that the contention of the respondents that the order impugned has been passed in the exercise of powers under rule 84 is not acceptable firstly on the ground that the impugned order

nowhere mentions that the same is being passed under the said rule and secondly the powers available to the District Election Officer under rule 84 is limited to the extent of correcting clerical or arithmetical mistakes or errors and the same is to be done only after giving a notice to all the contesting candidates whereas in the present case, no notices were given to the petitioner or other candidates which is evident from the impugned order itself which mentions that there is no necessity of hearing petitioner Chhedilel Ratre. Learned counsel for the petitioner submits that the validity of the order is to be judged by the reasons so mentioned in the order itself and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise as has been held by the Apex Court in paragraph-8 of the judgment delivered in the matter of ***Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others*** reported in ***AIR 1978 SC, 851*** . The relevant paragraph-8 of the above citation is being reproduced hereinunder;

> *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot b e supplemented by fresh reasons in the shape of affidavit or in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observation of Bose, J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p.18)"*
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> *"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*
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> *Order are not like old wine becoming better as they grow older."*

18. The petitioner further relies on the judgment delivered in the matter of ***Sohan Lal Vs. Babu Gandhi and others*** reported in ***(2003)1 SCC, 108*** and submits that after the declaration of the result, the Returning Officer has no power either to direct re-count or to change the result of the election and once, the result is declared, the only remedy for an aggrieved party is an election petition under Section 122 of the Act. He further submits that respondent No.2, District Election Officer has no jurisdiction under rule 84 to pass the impugned order as by the said provision only clerical or arithmetical mistakes or errors can be corrected in the result sheet, in Form 16, 17, 18 and 19 or in the return of the election in Form 20, 21, 22 or 23 as the case may be and by the impugned order, the order of re-count has been

declared void on the ground of some enquiry conducted by the District Election Officer in the absence of petitioner. It is further submitted that sub-rule 3 or rule 84 subsequently prohibits the District Election Officer from opening any envelope containing counted ballot papers or to direct recounting of votes. Thus, the impugned order of District Election Officer of Annexure P/7 and in pursuance of the above order, the certificate of election issued to the respondents of Annexure P/8, deserve to be quashed as the same being without jurisdiction.

19. He further contended that **as per Black's Law Dictionary clerical error means**, '*an error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination. Among the boundless examples of clerical errors are omitting an appendix from a document; typing an incorrect number; mistranscribing a word and failing to log a call. A court can correct a clerical error at any time, even after judgment has been entered.*

20. Placing his reliance on the judgment reported in ***AIR 1962 Punjab 110 (V 49 C 32)*** in the matter ***of Mansha Ram L. Jagdish Rai and others, Vs. Tej Bhan L. Gurditta Mal Sahney*** and also ***in AIR 1959 Andhra Pradesh 95 (V 46 C 28)*** in the matter of ***Bangaru Reddy and another, Vs. The State*** learned counsel for the petitioner submits that the contention of the respondents that the order in question was passed exercising powers under rule 84 is also without substance declaring order of recount passed by the Returning Officer void and further directing the Returning Officer to declare the result ignoring the effect of recount can at no stretch of imagination be held to be correction of clerical or arithmetical errors or mistakes. It is argued that the impugned order has been passed without compliance with the principles of natural justice affecting the substantial rights of the petitioner considerably and on this ground also the impugned order deserves to be quashed. Reliance is also placed on the judgment reported ***in (2004) 2 SCC 447*** in the case of ***Mangilal Vs. State of M.P. (Para-10).*** Learned counsel submits that certificate of election granted to the petitioner could not be quashed on the ground of irregularity of recount as pointed out by the District Election Officer except in a duly constituted election petition under Section 122 of the Act.

21. On the other hand, learned counsel for the respondents 1 to 3 submits that the impugned order has been passed in the exercise of powers conferred as per sub-rule 4 of rule 84 of the Rules 1995 as this rule authorizes the District Election Officer to correct the mistakes or errors in the result sheet and even if it is assumed that the District Election Officer has wrongly exercised its jurisdiction, it is not open

to the aggrieved party to challenge the same by way of writ petition because the remedy available to the petitioner was to challenge it by way of filing election petition under Section 122 of the Act as any result declared under rule 81 of the Rules is subject to the order passed by the District Election Officer and grant of certificate of election to the petitioner in Form 25 and 23 shall be deemed to have recalled and cancelled after passing of the order under rule 84.

22. Learned counsel for respondent No.4 submits that the impugned order of Annexure P/7 has been passed by the District Election Officer in the purported exercise of powers available to him under rule 22 read with rule 27 of Rules 1995 which provides the District Election Officer the power of overall direction and control upon the Returning Officers, Assistant Returning Officers and Presiding Officers, Polling Officers and the impugned order has been passed by following the procedure prescribed under rule 84 (4) which is well within the jurisdiction of the District Election Officer and the instant petition filed by the petitioner is not maintainable in view of the Article 243 (o) of the Constitution of India and in view of Section 122 of the Act. For the reasons cited in the impugned order, the order of recount passed by respondent No. 3 was in contravention of rule 80 and the same has rightly been declared void by the District Election Officer. As far as the contention of the petitioner that principles of natural justice has not been followed before passing the impugned order as no hearing opportunity was given to the petitioner is concerned, where the procedure adopted for recount was in flagrant breach of the rules, no opportunity of hearing was required to the petitioner and in support of this contention, he relies upon the Apex Court judgment reported in ***1996 (II) W.N.176*** in the matter of ***Biswa Ranjan Sahoo Vs. Sushanta Kumar Dinda.***

23. We have heard learned counsel for the respective parties and have gone through the impugned order of Annexure P/7 and material available on record. Findings by the District Election Officer in the impugned order has been enumerated in the paragraph-7 of the judgment.

24. The impugned order passed by the District Election Officer cannot be justified on the grounds that after the grant of election certificate under rule 83, the District Election Officer is only empowered under rule 84 to correct the clerical or arithmetical errors or mistakes (As per described in Black's Law Dictionary and in the case laws cited above) present in the result sheets prepared in Form 17 or in the return of election in Form 20 & 21 in the case of Sarpanch. By a bare reading of

the impugned order, no such clerical or arithmetical errors has been corrected by the impugned order by which it can be presumed that the District Election Officer exercising powers under rule 84 has passed the said order.

25. The second ground is whether the Returning Officer was competent to pass an order of recount and whether the same was exercised properly under rule 81 and as per directions given by the Election Commission from time to time? In our considered opinion, this could be adjudged by the Election Petition Tribunal on a duly constituted election petition and the District Election Officer has no jurisdiction to call for record and to conduct an enquiry and to verify the legality or propriety of the order of recount passed by the Returning Officer and this exercise can not be explained by the respondents that the same was done in the exercise of powers available under rule 84 of the Rules 1995 as has been held by the Hon'ble Supreme Court judgment in the case of ***Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi*** (supra) and the same could be challenged by the aggrieved party by filing a duly constituted election petition under Section 122 of the Act. That the impugned order is also bad on the ground that the same was passed without notice to the petitioner and without affording him an opportunity of hearing, though by the impugned order, the certificate of election given to the petitioner has been cancelled. Thus, this order is bad as it is in violation of the principles of natural justice.

26. Thus, on the basis of the above findings, question No.1 framed by the learned single judge is answered in negative.

27. So far as the question No.2 is concerned, once it is held that the impugned order has not been passed in the exercise of powers conferred under rule 84 by the District Election Officer and the same is without jurisdiction, in the above circumstances, the impugned order of Annexure P/7 declaring the recount ordered by Returning Officer as void and directing the Returning Officer to declare the result ignoring the out come of the recount and further in pursuance of the above order, issuance of election certificate of Annexure P/8 to respondent No.4 is also illegal and without jurisdiction. The parameters to be considered while entertaining election dispute has been elaborately detailed by the Hon'ble Supreme Court in the matter of ***Election Commission of India through Secretary Vs. Ashok Kumar and others*** reported in ***AIR (2000) 5 SC 2979 (Para-32)*** wherein it has been held that the Court must guard against any attempt at retarding, interrupting, protracting

or stalling of the election proceedings. In the instant case, the election proceedings, as defined in Section 2 sub-section 5 of the Act were already completed by declaring of result by the Returning Officer and issuing certificate of election to the petitioner and therefore, the instant writ is maintainable in view of paragraph-32 of the judgment (supra) which is reproduced as under;

> *"32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:-*
>
> *1) If an election, (the term 'election' being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.*
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> *2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.*
>
> *3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of malafide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.*
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> *4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or*

rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) *The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar or Article 329 (b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilize the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.*

28. We have already arrived to the conclusion that in pursuance of the order of Annexure P/7, present certificate of election was granted to the petitioner has been cancelled, therefore, in view of the judgment of the Hon'ble Supreme Court cited above, we are of the opinion that the instant petition, was maintainable and accordingly, answer to question No.2 framed by the learned single judge is answered in affirmative.

29. As a result, the petition is allowed and the impugned order of Annexure P/7 passed by the District Election Officer declaring the order of recount and subsequent recount conducted by respondent No.3, void, is set aside. Accordingly, the certificate of election of Annexure P/8 issued to respondent No.4 is also set aside. Consequently, the notice dated 31.01.2005 issued by respondent No.2 notifying the election of respondent No.4 is also set aside.

30. Taking into consideration the fact that by this order, certificate of election granted to respondent No.4 is set aside, liberty is granted to respondent No. 4 to file election petition under Section 122 of the Act which shall be considered on its own merits by the concerned Election Petition Tribunal and for the purposes of limitation, time consumed in the instant proceedings is ~~deducted~~ excluded.

31. With the aforesaid directions, the petition is allowed.

Sd//-
V.K.Shrivastava
Judge

Sd/-
Dhirendra Mishra
Judge